



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

Molly Joseph Ward  
Secretary of Natural Resources

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David K. Paylor  
Director

Craig R. Nicol  
Regional Director

**VIRGINIA WASTE MANAGEMENT BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
SOUTHEASTERN PUBLIC SERVICE AUTHORITY  
FOR  
THE SOUTHEASTERN PUBLIC SERVICE AUTHORITY  
REGIONAL LANDFILL  
Solid Waste Permit No. 417**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and the Southeastern Public Service Authority, regarding the Regional Landfill, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable permit and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" or "Landfill" means the Southeastern Public Service Authority Regional Landfill, located at 1 Bob Foeller Drive in Suffolk, Virginia, which is owned and operated by the Southeastern Public Service Authority.
5. "FAR" means the Financial Assurance Regulations for Solid Waste Disposal, Transfer and Treatment Facilities, 9 VAC 20-70-10 *et seq.*
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
8. "Permit" means Solid Waste Permit (SWP) No. 417, which was issued under the Virginia Waste Management Act and the Regulations to SPSA on September 12, 1983.
9. "SPSA" means Southeastern Public Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* SPSA is a "person" within the meaning of Va. Code § 10.1-1400.
10. "TRO" means DEQ's Tidewater Regional Office located in Virginia Beach, Virginia.
11. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. On September 12, 1983, SPSA was issued a permit to operate a sanitary waste landfill by the Virginia Department of Health. The Permit allows SPSA to accept and place solid waste into the landfill, which is divided into "cells". The Facility consists of six cells and each cell is divided into four quadrants. Leachate (any liquid that drains from the solid waste) and any stormwater that collects in the cells and makes contact with the solid waste becomes landfill leachate. Leachate from the landfill is then pumped to Hampton Roads Sanitation District ("HRSD"), as authorized by HRSD Industrial Wastewater Discharge Permit No. 0087.
2. The Facility has been operated as a sanitary waste landfill since the permit was issued. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.

3. On January 25, 2017, SPSA notified DEQ of “unusual conditions” regarding leachate storage in the liner systems for Cells V and VI that were above the regulatory requirements. On January 27, 2017, SPSA submitted to DEQ a written report (“Report”) of the “unusual conditions,” as required by the VSWMR. The Report listed that the leachate storage above the liner systems for Cells V and VI was in excess of 12 inches (30.48 centimeters (“cm”)). According to SPSA staff measurements, the leachate level was reported to be as much as 25 to 30 feet (“ft”) (762 to 914 cm) in Cell V, and 5 to 10 ft. (152 to 304 cm) in Cell VI.
4. On January 27, 2017, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act, the Regulations, and the Permit. Based on the inspection and follow-up information, Department staff made the following observations:
  - a. Excess leachate had accumulated in the leachate collection system;
  - b. Pumps in Cell V’s leachate collection system were not being operated or maintained, as required by the Permit.
5. Module I, Part (1)(B)(5) of the Permit states that all landfill appurtenances listed in 9VAC20-81-130 shall be properly maintained and operated as designed and approved in the Facility’s permit.
6. Module IIIA and IIIB, Part 5.1.5 of the Permit states that the leachate collection system will be installed so that no more than 1 foot of leachate may accumulate above the liner.
7. 9VAC20-81-530(C) requires that the permittee report to the department any noncompliance or unusual condition that may endanger health or the environment.
8. 9VAC20-81-210 requires that the leachate collection system shall be designed and constructed to maintain less than a 30 cm (0.98 ft) depth of leachate over the liner.
9. 9VAC20-81-100(B) requires that all solid waste disposal facilities shall be maintained and operated in accordance with the permit issued pursuant to this regulation and in accordance with the approved design and intended use for the facility.
10. VA Code § 10.1-1408.1(N) states that every solid waste management facility shall be operated in compliance with the regulations promulgated by the Board.
11. Based on the results of the January 27, 2017 inspection and supporting documentation submitted by SPSA, the Board concludes that SPSA has violated Module I, Part (1)(B)(5), 9VAC20-81-530(C), 9VAC20-81-100(B), and VA Code § 10.1-1408.1(N), as described in paragraphs C(3) through C(10), above.

12. On February 8, 2017, DEQ met with SPSA representatives to discuss SPSA's plans to remedy the "unusual conditions" and prevent re-occurrence.
13. On March 21, 2017, based on the inspection and follow-up information, the Department issued an NOV to SPSA for the violations described in paragraphs C(3) through C(10), above.
14. On March 24, 2017, SPSA responded to the NOV by telephone and indicated that it would investigate corrective action to address the leachate problem immediately. SPSA also agreed to submit to DEQ biweekly progress reports on the leachate levels. SPSA also indicated that it had awarded a bid to temporarily pump and haul leachate to four alternative discharge locations (50,000 gallons per day to each) within the HRSD system. SPSA submitted a minor Permit modification to haul leachate as an interim measure, which was approved on April 26, 2017.
15. On April 26, 2017, Department staff met with representatives of SPSA to discuss the violations, including SPSA's written response. At the meeting, SPSA identified potential causes for the leachate accumulation. The temporary pump and haul measures are estimated to reduce the leachate levels to the 30 cm depth limit within the next 150 days. SPSA also identified preventative measures moving forward. SPSA indicated that it plans to update its SCADA system, increase training and personnel, and improve monitoring and recordkeeping of leachate levels at the Facility. The Permit modification was amended on May 11, 2017.
16. In order for SPSA to return to compliance, DEQ staff and representatives of SPSA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders SPSA, and SPSA agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$67,693.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

SPSA shall include its Federal Employer Identification Number (FEIN) 54-1087433 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, SPSA shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of SPSA for good cause shown by SPSA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the NOV dated March 21, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, SPSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. SPSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. SPSA declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by SPSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. SPSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. SPSA shall demonstrate that such circumstances were

good faith or diligence on its part. SPSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. SPSA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.


Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and SPSA. Nevertheless, SPSA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after SPSA has completed all of the requirements of the Order;
  - b. SPSA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to SPSA.

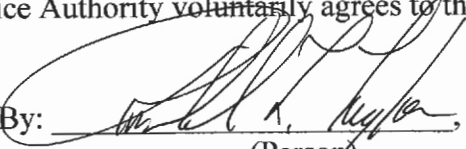
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SPSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by SPSA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of SPSA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind SPSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of SPSA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, SPSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 17 day of July, 2017.

  
\_\_\_\_\_  
Craig Nicol, Regional Director  
Department of Environmental Quality

Southeastern Public Service Authority voluntarily agrees to the issuance of this Order.

Date: June 1, 2017 By:  **Executive Director**  
\_\_\_\_\_  
(Person) (Title)  
Southeastern Public Service Authority

Commonwealth of Virginia  
City/County of Chesapeake

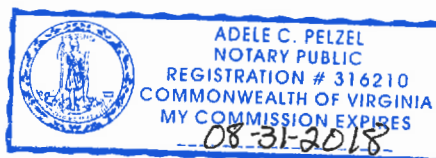
The foregoing document was signed and acknowledged before me this 1st day of June, 2017, by Rowland L. Taylor who is Executive Director of Southeastern Public Service Authority, on behalf of the Authority.

  
\_\_\_\_\_  
Notary Public

316210  
\_\_\_\_\_  
Registration No.

My commission expires: 08/31/2018

Notary seal:





## **APPENDIX A SCHEDULE OF COMPLIANCE**

SPSA shall:

1. Within 30 days of the effective date of this order, submit to DEQ a corrective action plan (“CAP”) and schedule to address the aforementioned violations.
2. Complete the CAP no later than December 31, 2018.
3. Submit all requirements of Appendix A of this Order to:

Regional Director  
VA DEQ – Tidewater Regional Office  
5636 Southern Boulevard  
Virginia Beach, Virginia